

THE DURRANT LAW FIRM

July 27, 2023

Via ECF

Hon. Sarah L. Cave
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St., Courtroom 18A
New York, NY 10007-1312

Re: *NIKE v. BY KIY, et al.* – 1:23-cv-02431-VM (S.D.N.Y.) – Emergency Motion

Dear Judge Cave:

Emergency Request for Protective Order. Pursuant to I A and I B of Your Honor's Individual Practices, undersigned counsel each respectfully write regarding an emergency issue that unfortunately requires Your Honor's attention.

Undersigned counsel learned today of facts that implicate our ethical duties and conclusively preclude our ability to continue to represent By Kiy, LLC ("By Kiy") and Nickwon Arvinger ("Mr. Arvinger") in this case.

This unfortunately presents an exigent problem, because Mr. Arvinger's deposition is scheduled for tomorrow in Newark, New Jersey. We accordingly request leave for a Protective Order to postpone Mr. Arvinger's deposition for a sufficient time for Mr. Arvinger and By Kiy to retain another lawyer to act as an attorney in this case. We do not ask for this relief lightly but because, based on the totality of the circumstances now known to us and learned only today, it is necessary.

Counsel for Defendant David Weeks does not oppose this Motion. When asked Nike's counsel declined to take a position but we understand that they are checking with their client about their position.

Request for Leave to File Motion to Withdraw in Camera.

We also write to respectfully request permission to file a motion to each withdraw as counsel without any pre-motion conference. Additionally, we respectfully request leave to file the motion under seal for *in-camera* review and consideration.

We respectfully submit that our respective Firms have satisfactory reasons for withdrawal under Local Civil Rule 1.4. The general basis for the motion is that withdrawal is appropriate based on NY Rules of Prof. Con. Rule 1.16(b)(1) and 1.16(c) and, to the extent applicable, the California Rules of Professional Conduct. Although we would generally set forth the basis for

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the anticipated motion in more detail in this letter, including citations to authority and a brief overview, in order to preserve the confidentiality of the attorney-client relationship, we are respectfully requesting that the Court allow our motion to withdraw, and the accompanying declaration and memorandum of law, to be filed under seal for in camera review and consideration, with copies served on By Kiy and Mr. Arvinger but not any other parties. See e.g. *Thekke v. LaserSculpt, Inc.*, No. 11 Civ. 4426(HB)(JLC), 2012 WL 225924, at *3 (S.D.N.Y. Jan. 23, 2012) (granting motion to withdraw upon in camera review, explaining: “documents in support of motions to withdraw as counsel are routinely filed under seal where necessary to preserve the confidentiality of the attorney-client relationship between a party and its counsel, and ... this method is viewed favorably by the courts”) (internal quotations omitted) (quoting *Team Obsolete Ltd. v. A.H.R.M.A. Ltd.*, 464 F.Supp.2d 164, 165-66 (E.D.N.Y. 2006); *Weinberger v. Provident Life & Cas. Ins. Co.*, No. 97 Civ. 9262(JGK), 1998 WL 898309, at *1 (S.D.N.Y. Dec. 23, 1998).

We respectfully request instruction as to whether such Motion should be addressed to Your Honor or Judge Marrero.

Respectfully submitted,



John Durrant, Esq.
THE DURRANT LAW FIRM, APC



Zakari A. Kurtz, Esquire
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